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10/602,286	06/24/2003	Walter Douglas Bauman	60130-1705; 03MRA0130	1155

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EXAMINER

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ART UNIT PAPER NUMBER

3683

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/602,286
Filing Date: June 24, 2003
Appellant(s): BAUMAN, WALTER DOUGLAS

John M. Siragusa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/7/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) OF REJECTION

Claims 1-22 are rejected under 35 U.S.C 102.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

4,679,841

TAUNAY

7-1987

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Taunay (U. S. Patent no. 4,679,841).

Taunay discloses:

Vehicle closure member 1, Arm 9 with first segment between pivot point 8 and pivot point 19 and second segment between pivot point 13 and pivot point 19, extension member 12, gas spring 5 with two segments, hinge assembly 3, roller 17

Taunay discloses biasing the roller against the vehicle closure member in column 2 lines 55-58.

Regarding claims 4, 13, 22, an extension member 12 extends transversely to the second segment.

Regarding claims 5, 14, and 21, the moment arm 13-19 is longer than the moment arm 8-19 as can be seen in figure 2. Examiner additionally notes that Appellant admits that the length of the moment arm is merely a design choice based on environmental factors (Paragraph 18 "Therefore, location of the pivot 22 relative to the hinge axis 44 is

dependent on application specific parameters, such as member weight and size."). As such, the examiner does not feel that claims 5,14, and 21 can be considered separately patentable from their respective independent claims.

(10) Response to Argument

Regarding claims 1 and 11, Appellant argues that the examiner's reading of claim 1 and the Taunay reference is incorrect. Specifically, the appellant argues that the second segment of Taunay is not biased against the vehicle or the closure member. The examiner disagrees. Biasing against is generally defined as providing a force against. The second segment of Taunay provides a force through extension member 12 and roller 17. This is the same manner in which the second segment of the instant invention biases against the closure member (though extension member 32 and roller 50). Appellant also states that claim 1 requires a "single arm". The examiner interprets that to mean that all the elements of the arm are formed of one piece with each other. The examiner disagrees with this interpretation. Claim 1 discloses "an arm". One or several pieces may compose "an arm".

Regarding claims 4,13, and 22, Appellant argues that Taunay does not disclose a extension member. The examiner disagrees. Extension member 12 meets the limitations of the claims. The appellant further argues that the extension member must be in contact with the closure member. The extension member 12 of Taunay is in contact with the closure member through the roller 17 in exactly the same way the extension member s in contact through the roller 50 of the instant invention.

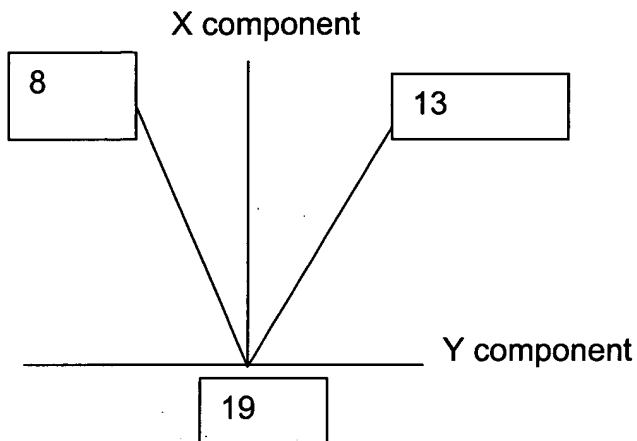
Regarding 5, 14, and 21, appellants argue that figure 2 discloses equal length segments. The examiner disagrees. Appellants further argue that it would not be obvious to make the second segment longer because of alleged drawbacks. All the drawbacks mentioned apply equally to the instant invention. Appellants arguments rests on the assumption that pop-up force is the only variable. This is incorrect. The length of the second segment affects the amount of "pop-up". The longer the second segment, the more the closure element opens, thus making it easier to grab by the user. This can be seen in figure 3 of Taunay. As the length of the second segment increases, the pivots 13 and 16 come closer together which forces the extension member 12 and link 15 to form a more acute angle. There is a trade off in force applied verses distance moved for both Taunay and the instant invention. Furthermore, Appellants admitted in the specification that any length may be used as the examiner noted above.

Regarding claims 8 and 17, Appellant argues that the roller of Taunay is not attached to the second segment. The examiner disagrees. The claim states that the roller is attached not directly attached. Therefore, the roller is attached through extension member 12 and link 15.

Regarding claims 18-20, Appellant argues that Taunay does not disclose the segments extending in opposite directions. The examiner disagrees. In a 2 dimensional plane, all "directions" are composed of two components, traditionally a x and a y. The segments of the arm of Taunay have a "x" component in the same

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direction and a "y" component in opposite directions. The examiner includes the following drawing to help clarify.



The prior art does not have to look identical to the instant invention, but merely needs to meet the limitations of the claim. Appellants have made several arguments that since Taunay does not look exactly like the instant invention, it can not meet the limitations of the claim. The arm 9 of Taunay can be viewed as a filled in V where the sides of the V are the segments as identified by the examiner. Similarly, the arm of the instant invention is a W shape. If the space was filled in between the pivots, the function of the device would be unaffected AND the limitations of the claims would still be met.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* dismissal of the appeal as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

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Respectfully submitted,

RS *RS*

Robert A. Siconolfi 5/24/05
ROBERT A. SICONOLFI
PATENT EXAMINER

A Technology Center Director or designee must personally
approve the new ground(s) of rejection set forth in section (9)
above by signing below:

David A. Bucci 5/24/05
DAVID A. BUCCI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

David Bucci

Conferees:

DB

TJW

TW